IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

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:: **JUDGMENT** ::

Virda Ram Vs. Ram Lal & Ors.

S.B. CIVIL MISC. APPEAL NO.68/1995.

Against the award dated 28.09.1994 made by the Motor Accidents Claims Tribunal, Jalore in Claim Case No. 6/1990.

Date of Judgment :: 15th May 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Rajesh Panwar with
Mr. S.K. Sankhla, for the appellant.
Mr. Dhanpat Choudhary, for the respondent No.1.
Mr. R.K. Mehta, for the respondent No.3.

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BY THE COURT:

This is claimant's appeal seeking enhancement over the amount of Rs.75,000/- together with interest @ 12% per annum from the date of filing of claim application awarded by the Tribunal towards compensation on account of the loss suffered by him due to the injuries sustained in a vehicular accident.

Quantum of compensation being the only matter of consideration in this appeal, a brief reference to the background

relevant facts could be made thus : the claimant-appellant sought compensation against the driver, owner and insurer of a truck bearing registration No. GTY 6473 with the submissions that on 07.10.1989 at about 7:30 p.m. on National Highway No.15 near village Sewara while he was sitting on a tractor parked on the side of the road, the non-applicant No.1 brought driving the aforesaid truck GTY 6473 rashly and negligently and rammed into the tractor causing injuries to the claimant and other persons, Hukamdas and Chhoga Ram. The claimant averred that due to the accident, he sustained bodily injuries including those on left lower limbs whereby his left foot was severed; that he has become disabled due to amputation of left foot, has gone substantially weak for loss of blood, and was incapacitated to do any work. Stating his age at 30 years and his wife and children being dependent on him, the claimant submitted that he was cultivating 60 bighas of land and was earning Rs.60,000/- per annum and was deprived of the entire income due to permanent disablement. The claimant also stated that substantial expenditure was incurred on his treatment, for his hospitalisation from 07.10.1989 to 30.11.1989, and on special diets; and in all made the claim for compensation in the sum of Rs.5,00,000/-.

The claim for compensation was put to contest by the insurer, while stating general denial of the claim averments, and

alleging violation of policy conditions and so also the requirement of impleading the persons related with the tractor concerned as parties to the claim application.

After framing of necessary issues by the Tribunal, the claimant Virda Ram examined himself as AW-1; Chaina Ram, another alleged occupant of the tractor concerned at the time of accident as AW-2; Dr. Rajesh Nahta, the medical officer of Mahatma Gandhi Hospital, Jodhpur who has carried out medical examination of the claimant as AW-3; Rama Ram, yet another alleged occupant of the tractor concerned at the time of accident as AW-4; Babu Lal, allegedly an eyewitness being owner of a hotel located near the scene of accident as AW-5; and Bhiya Ram, Sarpanch of the village of the claimant as AW-6. The claimant also produced documentary evidence including certified copies of challan, FIR, site inspection memo, and site plan as Ex.1 to Ex.4; his disablement certificates Ex. 5 and Ex. 6; certified copy of his injury report Ex.7; certified copies of Jamabandies Ex. 8 and Ex. 9; bills of treatment expenditure Ex.10 to Ex. 19; attested copy of his discharge ticket of the year 1991 as Ex.20; and his photograph Ex.21. The non-applicants did not adduce any evidence.

After hearing the parties, the learned Judge of the Tribunal proceeded to hold in issue No.1 that the accident occurred for rash and negligent driving of the truck GTY 6473

that hit the tractor from behind and caused bodily injuries on the person of the claimant who remained hospitalised from 07.10.1989 to 29.11.1989 and his left foot was required to be amputated. While deciding issues Nos. 3 to 6, the learned Judge rejected the contentions of the insurer of violation of policy conditions by the insured and of contributory negligence of the tractor driver.

The learned Judge of the Tribunal took up quantification of compensation in issue No.2 thus: while observing that the claimant has stated his age at 30 years in the claim application but stated the same at 40 years in his statements recorded nearly four years after the incident, the learned Judge observed that his age could be taken at about 35 years on the date of accident, i.e., 07.10.1989. Then, the learned Judge noticed that the claimant asserted his earnings at Rs.60,000/- per annum from 60 bighas of irrigated land but with reference to the Jamabandies Ex.8 and Ex. 9 found that the said land was of joint khatedari of the claimant and his two brothers. In this view of the matter, when the claimant asserted an income of Rs.60,000/- per annum from 60 bighas of land, the learned Judge put an estimate on his income at one-third thereof, i.e., Rs.20,000/- per annum. The learned Judge, then, observed that though the claimant suffered amputation of left foot but admittedly the land has not gone unutilised as the witness AW-

4 Rama Ram stated that the claimant got the land cultivated through labourers and that the land was in joint cultivation of three brothers. The learned Judge also rejected the assertion of the claimant that he was merely lying on a cot taking medicines and not working at all. However, the learned Judge observed that the claimant was deprived of his left foot and could not carry out agricultural operations properly; and might face difficulties when the brothers would separate. In the overall view of the matter, the learned Judge considered it reasonable to assess the loss of earnings of the claimant at Rs.2,500/- per year and estimated his loss for 25 years at Rs.62,500/-. With reference to the bills and vouchers, the learned Judge considered it proper to allow Rs.2,000/- towards treatment expenditure and further Rs.10,000/- towards pain and sufferings. In this manner while assessing total loss at Rs.74,500/-, the Tribunal awarded compensation in the rounded sum of Rs.75,000/-.

Assailing the award aforesaid and seeking enhancement, learned counsel for the claimant-appellant strenuously contended that in view of amputation of his left foot at a young age of about 35 years and for his hospitalisation twice over, the compensation allowed to the claimant in the sum of Rs.75,000/- remains too low and grossly inadequate. Learned counsel submitted that even while going by the estimate put by the

Tribunal, if the annual income of the claimant is taken at Rs.20,000/- per annum and 40% thereof is considered towards the loss of earning capacity in view of amputation of left foot, a multiplicand of Rs.8,000/- per annum could reasonably be considered for the claimant; and with application of multiplier of 16, his pecuniary loss stands at Rs.1,28,000/-; and, thus, the Tribunal has been in error in awarding the amount towards loss of earning capacity only at Rs.62,500/-. Learned counsel further submitted that the Tribunal has erred in not allowing any amount towards non-pecuniary loss and in not considering that for permanent disablement with amputation of left foot, the claimant is deprived of leading a normal life and has suffered substantial loss of amenities of life.

Per contra, learned counsel appearing for the respondent insurer has supported the award impugned and submitted that the Tribunal has awarded compensation rather on a liberal scale and in the context of the period of incident, the award of compensation in the sum of Rs.75,000/- cannot be said to be low or unreasonable. Learned counsel submitted that the three brothers cultivated the land jointly and hence, there cannot be substantial loss of earnings of the claimant.

Having heard learned counsel for the parties and having examined the record in its totality, this Court is clearly of opinion that the impugned award on its quantification of compensation

remains too restrictive and inadequate; and deserves modification by upward revision particularly for the fact that the Tribunal has not awarded reasonable compensation towards non-pecuniary loss despite the admitted fact situation of the case that the claimant has suffered permanent disablement with complete loss of his left foot.

So far the award of compensation on loss of earning capacity is concerned, this Court is of the view that though the proposition adopted by the Tribunal appear to be a bit restrictive in taking such loss only at Rs.2,500/- per annum; but with application of multiplier of 25, the ultimate amount awarded by the Tribunal in the sum of Rs.62,500/- cannot be said to be grossly inadequate. It is noticed from Jamabandi (Ex.8) that the land of 30 bighas comprised in khasra No.275/8 was in khatedari of one Allahrakh son of Salu Khan and has been mutated in the name of the claimant and his two brothers under mutation entry No.299 as stated in this Jamabandi for Svt. Years 2044-2047. The date of such mutation is not stated nor the date of purchase of the land by the claimant and his two brothers is available on record; and the claimant has vaguely stated that the said land was purchased before the date of accident. It is difficult to conclude from Jamabandi (Ex.8) that the said 30 bighas of land of khasra No.275/8 was yielding any income to the claimant. From other Jamabandi Ex.9, again

issued for Svt. Years 2044 - 2047, it is noticed that 30 bighas of land comprised in khasra No.275/7 was recorded in the name of the claimant and his two brothers but was mortgaged with State Bank of Bikaner & Jaipur, Branch Gudamalani. No other proof of income from the said land has been adduced nor even the copy of the statement of account with the mortgagee bank has been filed. In oral evidence, apart from himself, the claimant examined five witnesses. Two of them, AW-2 Chaina Ram and AW-4 Rama Ram, are said to be the occupants of the tractor in question at the time of accident (different persons than those named in the claim application); and AW-4 Rama Ram has attempted to suggest that the claimant was earning in agriculture from 50-60 bighas of land but his statement is quite general and not of any proof of income of the claimant. Similarly, AW-6 Bhinya Ram, said to be Sarpanch of village has made cryptic and cursory statement about 60-70 bighas land of the claimant and his brothers. AW-5 Babu Lal was examined as eyewitness to the accident and AW-2 Dr. Rajesh Nahta regarding medical opinion on disablement. However, for the reasons inexplicable, the claimant has not examined the relevant witnesses, his two brothers, the co-sharers of the land in question. In the face of such incomplete material on record and for want of production of the relevant witnesses, it is difficult to deduce that the claimant and his two brothers were

earning Rs.60,000/- per annum from the land referred in Jamabandi Ex. 8 and Ex.9 and it is moreover difficult to find that the claimant had a share of Rs.20,000/- per annum as assumed by the Tribunal.

Having regard to the facts and circumstances of the case particularly when the claimant has suffered amputation of left foot, some loss of earning capacity cannot be denied to him but the amount awarded by the Tribunal on that score in the sum of Rs.62,500/- cannot said to be too low. It is also noticed that the claimant has not been forthright in his submissions inasmuch as he stated his age at 30 years in the claim application but then, stated his age at 40 years in the statements recorded nearly four years after the accident. In the overall circumstances of the case, there appears no scope for enhancement in the amount awarded by the Tribunal towards loss of earning capacity. The Tribunal has reasonably allowed the amount of Rs.10,000/- towards pain and sufferings and so also the amount of Rs.2,000/- towards treatment expenditure.

However, this Court is of opinion that on the facts and circumstances of the case particularly when hospitalisation of the claimant from 07.10.1989 to 29.11.1989 is not in dispute and when he has suffered amputation of his left foot, the claimant ought to have been allowed reasonable amount towards attendants during the period of hospitalisation and so

also in the later part of his life. In the circumstances of the case, an amount of Rs.10,000/- deserves to be allowed to the claimant towards attendants. In view of considerable period of hospitalisation and the kind of injuries suffered, it does appear reasonable to allow a further amount of Rs.2,000/- to the claimant towards special diets. The claimant had suffered amputation of his left foot at a comparatively young age of 35 years and the resultant loss of amenities of life, inconvenience and hardship deserve to be suitably compensated. Having regard to the circumstances of the case, this Court is of opinion that the interest of justice shall be served if the claimant is allowed a further amount of Rs.48,000/- towards non-pecuniary loss including that of loss of amenities of life. The claimant is, therefore, entitled for an amount of Rs.60,000/- (10,000 + 2,000 + 48,000) over and above the amount awarded by the Tribunal. The Tribunal has awarded compensation in the sum of Rs.75,000/- and with enhancement by Rs.60,000/-, the claimant is awarded total compensation in the sum of Rs.1,35,000/-.

The Tribunal has allowed interest @ 12% per annum; but in view of the enhancement being allowed herein and looking to the period of litigation, it appears appropriate to allow interest @ 7.5% per annum on the enhanced amount from the date of filing of claim application.

In the result, the appeal filed by the claimant succeeds and is partly allowed; the impugned award made by the Tribunal is modified and in place of the amount of Rs.75,000/-, the claimant-appellant is awarded compensation in the sum of Rs.1,35,000/-. The claimant shall, therefore, be entitled for a further amount of Rs.60,000/- over and above the amount awarded by the Tribunal and shall be entitled for interest @ 7.5% per annum on this enhanced amount from the date of filing of claim application. The respondent-insurer shall deposit the remaining amount payable under the modified award within 30 days with the Tribunal. Upon deposit, the Tribunal shall issue necessary and appropriate orders for disbursement. In the circumstances of the case, the parties are left to bear their own costs.

(DINESH MAHESHWARI), J.

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